

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

HENRIETTA WERTHY,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No.: 3:10-cv-00324-HU

**OPINION AND ORDER ADOPTING
FINDING AND RECOMMENDATIONS**

SIMON, District Judge.

On June 26, 2012, Magistrate Judge Dennis J. Hubel issued Findings and Recommendations in this case. Dkt. 33. Judge Hubel recommended that Plaintiff's motion for Equal Access to Justice Act ("EAJA") fees, Dkt. 27, should be granted in part and denied in part. Judge Hubel also recommended that the court should award EAJA fees in the amount of \$3,623.74. No party has filed objections.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, "[t]here is no indication that Congress, in enacting [the Magistrates Act]

intended to require a district judge to review a magistrate's report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate's findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate's findings and recommendations for “clear error on the face of the record.”

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Hubel's findings and recommendations for clear error on the face of the record. No such error is apparent. Accordingly, the court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation, Dkt. 33.

IT IS SO ORDERED.

Dated this 10th day of August, 2012.

/s/ Michael H. Simon

Michael H. Simon
United States District Judge